

**Coastal Sunbelt Produce, Inc. and Mayra L. Sagastume.** Case 05–CA–036362

October 30, 2014

## DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA  
AND SCHIFFER

On September 20, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 358 NLRB 1287. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the Fourth Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order (as modified below) to the extent and for the reasons stated in the Decision and Order reported at 358 NLRB 1287, which is incorporated herein by reference.<sup>1</sup>

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Coastal Sunbelt Produce, Inc., Savage, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 2(c) and reletter the subsequent paragraphs.

<sup>1</sup> We do not incorporate herein, however, the second paragraph of fn. 1 in 358 NLRB 1287. We shall modify the judge's recommended Order in accordance with our recent decision in *Don Chavas, LLC d/b/a Tortillas Don Chavas*, 361 NLRB 101 (2014), and substitute a new notice in accordance with *Durham School Services*, 360 NLRB 694 (2014).

“(c) Compensate Mayra L. Sagastume for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.”

2. Substitute the attached notice for that of the administrative law judge.

MEMBER MISCIMARRA, concurring.

I agree with the judge's rulings, findings, and conclusions, and I join in adopting the judge's recommended Order as modified above, except (i) in finding that the Respondent harbored animus toward the discriminatees' union and protected activity, I do not rely on evidence regarding the Respondent's antiunion campaign, its hiring of an outside consultant, or CEO John Corso's statement about feeling that he had been stabbed in the back because of the organizing campaign; and (ii) I do not rely on the judge's inferences regarding Corso's knowledge of union activity by Luis Hernandez (whose wife, Mayra Sagastume, we find was unlawfully interrogated and discharged in violation of Sections 8(a)(1) and (3) of the Act). I also agree there is no basis for reversing the judge's credibility findings under *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). Accordingly, I concur.

## APPENDIX

## NOTICE TO EMPLOYEES

## POSTED BY ORDER OF THE

## NATIONAL LABOR RELATIONS BOARD

## An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

## FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT coercively question you about your union activities or the activities of your family members on behalf of Drivers, Chauffeurs & Helpers Union No. 639 a/w the International Brotherhood of Teamsters or any other labor organization.

WE WILL NOT discharge you because you or your family members engage in union activities and to discourage you from engaging in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL, within 14 days from the date of the Board's Order, offer Mayra L. Sagastume full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Mayra L. Sagastume whole for any loss of earnings and other benefits suffered as a result of her unlawful termination, less any net interim earnings, plus interest.

WE WILL compensate Mayra L. Sagastume for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlaw-

ful termination of Mayra L. Sagastume, and WE WILL, within 3 days thereafter, notify her in writing this has been done and the termination will not be used against her in any way.

COASTAL SUNBELT PRODUCE, INC.

The Board's decision can be found at [www.nlr.gov/case/05-CA-036362](http://www.nlr.gov/case/05-CA-036362) or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

